IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 30 OF 2007

1. Smt. Amita Grover,

2. Shri Sahil Grover,

(being wife and son of
late Pravin Grover,
the Complainant)
residing at B-64,
Lajpat Nagar,
Part II, FF,
Opp. Arya Samaj Mandir,
New Delhi 110 024. ... Appellants

versus

1. Shri Sunil Thukral,
(in Judicial Custody at
Mapusa)

2. Shri Anant Y. Volvoikar,
House No.151
Near T. B. Hospital,
Chinchalim, P. O. Taleigao,
Panaji-Goa. ...Respondents

Mr. A. F. Diniz, Advocate for the Applicants.

Mr. R. Satardekar, Advocate for the Respondent No.1.

Mr. J. Godinho, Advocate for the Respondent No.2.

CORAM : N. A. BRITTO, J.

DATE : 28TH JUNE, 2007.

ORAL ORDER

Heard the learned Counsel on behalf of all the parties.

2. One Mr. Pravin Grover stating that he was the Managing Director of Candolim Developers Pvt. Ltd., a company set up under the Companies Act, 1956 filed a complaint against the accused(the respondents herein), inter alia, alleging that they had forged his signature on a resignation letter and had shown the same to the unit holders of "Perola do Mar" owned by the said Candolim Developers Pvt. Ltd. The learned J.M.F.C. was pleased to issue process against the accused under Section 465 I.P.C. There is no dispute that an offence under Section 465 I.P.C. is summons triable and it is also stated on behalf of the accused that substance of accusation was already explained to the accused.

3. The complainant i.e. the said Pravin Grover was murdered on 11-7-2006. His wife and son, namely, Amita Grover and Sahil Grover, the present appellants, filed an application dated 24-8-2006 stating that they were the legal representatives of the said complainant and sought leave to allow them to continue with the complaint filed by the said Pravin Grover, which application came to be dismissed by the impugned Order dated 12-12-2006. In dismissing

the said application filed by the wife and son of the said complainant, the learned J.M.F.C. observed that since the complainant had died, the complaint could not be proceeded as personal attendance of the complainant was necessary to give evidence and there was no provision to bring the legal representatives of the complainant on record, in criminal matters.

4. On behalf of the appellants i.e. the legal representatives of the deceased complainant, reliance has been placed on the case of **Rashida Kamaluddin Syed and another** v. **Shaikh Saheblal Mardan**(2007(1) Bom.C.R.(Cri.) 606) wherein the Hon'ble Supreme Court after referring to its previous decisions and also with reference to Section 302 of the Code of Criminal Procedure, 1973 has held that permission to continue the prosecution could be granted.

5. On behalf of the accused no.1, Mr. R. Satardekar has placed reliance on the decision of the Karnataka High Court in the case of **Subbanna Hegde and others** v. **Dyavappa Gowda**(1980 Cri. L. J. 1405) and submitted that the case of the complainant being a summons triable case no permission to continue with the complaint could be granted. The Karnataka High Court in the aforesaid decision has stated that as far as the inquiry and trial of summons cases are concerned, it appears that the provisions of Section 256 of the Code of Criminal procedure, 1973 are clear and unambiguous and that on the death of the complainant the only alternative left was to acquit the accused and thus the Magistrate was in error in proceeding with the case upon the death

of the complainant by allowing his son to prosecute the complaint. With respect, I am unable to agree with the view held by the learned Single Judge inasmuch as the aforesaid view, is not tenable now in the light of the decision of the Apex Court in **Rashida Kamaluddin Syed and another** v. **Shaikh Saheblal Mardan**(supra) wherein the right to continue with the complaint in summons triable cases including under Section 138 of the Negotiable Instruments Act, 1881 has been recognized.

6. On the other hand, Mr. J. Godinho, the learned Counsel on behalf of the accused no.2 contends that the allegation of the complainant was that both the accused had committed forgery in relation to a letter of resignation and therefore the complainant was agitating a right which was personal to him and a complaint on such a right could not have been allowed to be continued by his legal representatives. As already stated, the complaint was filed with the allegation that both the accused had made a false document i.e. the said letter of resignation by which it was represented to the unit holders that the complainant had ceased to be the Managing Director of the said company. The accused being the wife and the son of the said complainant would certainly be interested in prosecuting the complaint filed by their husband and father, respectively, since according to them the said complainant had not at all resigned as Managing Director of the said company. Considering the aforesaid fact situation, the application filed by the present appellants should have been allowed by the trial Court. Consequently, the appeal succeeds. The impugned Order is hereby set

aside. The appellants are permitted to continue with the complaint filed by the complainant.

7. Appeal allowed on the above terms.

N. A. BRITTO, J.

RD